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DISTRICT OF COLUMBIA
DEPARTMENT OF PUBLIC WORKS
Petitioner,

v.

ALDO LEMUCCHI
Respondent.

Case No.: 2012-DPW-K508094

FINAL ORDER

I. Summary

There was a violation of 21 DCMR § 700.3 as charged by the Department of Public Works (DPW). However, because the violation occurred on both the private and public space, the underlying fine for the violation shall be suspended.

II. Procedural Background

DPW served NOV #K508094 to Respondent charging Respondent with violating § 700.3 by having improperly stored solid waste. The alleged violation occurred on February 3, 2012, on the space between Respondent's private property located at 3610 14th Street, N.W. (Property) and the public space. The Department of Public Works sought a fine of \$150. Respondent filed an answer of deny to the violation.

An evidentiary hearing was held on May 25, 2012. Inspector Yolanda Hood appeared for DPW. Aldo Lemucchi appeared to represent himself. The parties and witnesses were sworn in prior to testimony being taken.

Based on the parties' testimony, my evaluation of their credibility and the exhibits admitted into evidence, I now make the following findings of fact and conclusions of law.

III. Findings of Fact

Inspector Hood, during routine inspection in the rear of the 3600 block of 14th Street, NW, came upon a number of large, plastic trash bags filled with waste materials in the rear of Respondent's commercial property located at 3610 14th Street, N.W. (Property). Petitioner's Exhibits (PX) 100 – 101. The discarded trash bags overlapped public space and private space. Inspector Hood wrote a NOV charging Respondent with violating § 700.3 of the Regulations.

Respondent is the owner of the commercial Property, which is a business d/b/a Associated Computer. Respondent has a commercial waste hauler who removes Respondent's solid waste materials from the front of the Property. Respondent's Exhibit (RX) 200. Respondent did not place the trash bags on his Property or in the public space.

IV. Conclusions of Law

The Government charges that there was a violation of DCMR § 700.3, which states:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

The Regulation requires that solid waste containerized for collection. In this case, Respondent avers that the uncontainerized plastic trash bags were illegally dumped by others. However, the District of Columbia Court of Appeals has held that § 700.3 imposes strict liability on those who **own or control a property**, regardless of the source of, or reason for, the offending waste. (emphasis added). See *Gary Investment Corp. v. District of Columbia Department of Health*, 896 A.2d 193, 197 (2006) (imposing strict liability on property owner for violation of §700.3); *Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202, 203 (D.C. 1995) (also imposing strict liability).

I credit Respondent's testimony that he did not place the trash bags in the rear of his Property. However, § 700.3 imposes strict liability on those who, as herein mentioned, **own or control a property**, regardless of the source of, or reason for, the offending waste. Because some of the trash bags were on his Property, Respondent was charged. For these reasons, I find that there was a violation of § 700.3 but the underlying fine shall be dismissed.

V. Order

It is, therefore, this _____ day of _____, 2012:

ORDERED, that there was a **VIOLATION** of § **700.3** at the rear of Respondent's Property as charged, and, it is further

ORDERED, that the underlying FINE for the violation is **SUSPENDED**; and it is further

ORDERED, that either party may file a request for reconsideration within 15 calendar days of the date of mailing listed below, pursuant to OAH Rule 2828; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Order are stated below.

Joan Davenport
Administrative Law Judge